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7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF NEVADA**
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10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 v.

13 MATTHEW RIDGE,

14 Defendant.

Case No. 2:09-cr-00455-LDG

ORDER

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16 The defendant moves (#58) pursuant to 28 U.S.C. §2255 to have the Court vacate
17 and re-enter the judgment, arguing that he instructed his counsel to file an appeal, but that
18 his counsel did not do so. The government does not oppose the motion (#63).¹ As the
19 government has filed a non-opposition to the defendant's allegation, the Court need not
20 hold an evidentiary hearing on the defendant's allegation, but assumes for purposes of the
21 motion that the allegation is true. The failure of counsel to file an appeal as instructed by
22 the defendant is ineffective assistance of counsel, as it denies the defendant an
23 opportunity to file a timely appeal. The appropriate remedy in this circumstance is to

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¹ In filing its non-opposition, the Government has indicated that it is reserving all rights obtained by the signing of the plea agreement, in which the defendant waived his right to appeal.

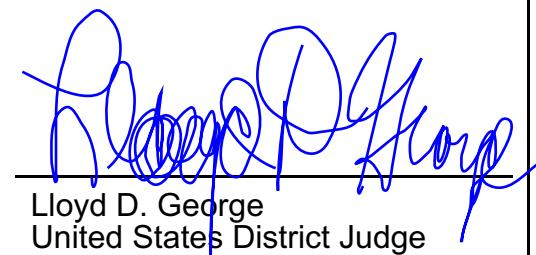
1 vacate and re-enter the judgment, as this provides the defendant an opportunity to file a
2 timely appeal. Accordingly,

3 THE COURT **ORDERS** that the Defendant's Motion Pursuant to 28 U.S.C. §2255 is
4 GRANTED.

5 THE COURT FURTHER **ORDERS** that the Clerk of the Court shall prepare an
6 Amended Judgment in a Criminal Case imposing the same sentence and all other terms
7 and conditions as originally imposed.

8 THE COURT FURTHER **ORDERS** that, effective upon the entry of the Amended
9 Judgment, the Judgment is VACATED.

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11 DATED this 4 day of January, 2012.
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A handwritten signature in blue ink, appearing to read "Lloyd D. George".

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Lloyd D. George
United States District Judge